



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT
1325 J STREET
SACRAMENTO CA 95814-2922

408 Permission Section

PUBLIC NOTICE

**REQUEST FOR PERMISSION TO ALTER A U.S. ARMY CORPS OF ENGINEERS
PROJECT UNDER SECTION 408**

TITLE: Heiny Farming Authorizations (19483)

PUBLIC NOTICE COMMENT PERIOD:

Begins: September 02, 2020

Ends: October 01, 2020

REQUESTER: In compliance with U.S.C. Title 33, Chapter 9, Subchapter 1, Section 408, Donald and Donna Heiny (requester) has requested permission through the Central Valley Flood Protection Board (CVFPB) (non-federal sponsor of the federally authorized project) from the U.S. Army Corps of Engineers (USACE) to alter the Lower San Joaquin River and Tributaries Project an existing federal flood risk management project, authorized by the Flood Control Act of December 22, 1944, Public Law 534, 78th Congress, 2nd Session, Section 10.

LOCATION: San Joaquin River, Stanislaus County, California (Attachment 1 & Attachment 2).

REQUESTER'S PROPOSED ACTION: To authorize an existing landside ramp and existing waterside ramp with a 16-foot-wide gate. To authorize existing fruit trees located more than 10 feet from the waterside levee toe. To authorize an existing water storage tank. To authorize an existing pump on the waterside berm, 10-inch-diameter pipe through the levee with a shut off valve. To authorize an existing 12-inch diameter concrete drainage pipe, 4-foot by 7-foot concrete distribution box, and a 14-inch diameter PVC pipe; all parallel to the landside levee toe. To authorize an existing pump on the waterside berm, irrigation lines to waterside farming, and a 4.5-foot by 5.5-foot concrete vault. To authorize existing farming within the San Joaquin River Designated Floodway (Attachment 3 & Attachment 4).

ENVIRONMENTAL IMPACTS OF PROPOSED ACTION: The proposed action is to grant permission for the existing structures, irrigation, and trees to remain in place. As all work on the alteration has already been completed, USACE does not anticipate that allowing the existing alterations to remain in place would have any adverse effects on environmental resources.

AUTHORITY: The authority to grant permission for temporary or permanent use, occupation or alteration of any USACE civil works project is contained in Section 14 of the Rivers and Harbors Act of 1899, as amended, codified at 33 U.S.C. 408 ("Section 408"). Section 408 authorizes the Secretary of the Army, on the recommendation of the

Chief of Engineers, to grant permission for the alteration or occupation or use of a USACE project if the Secretary determines that the activity will not be injurious to the public interest and will not impair the usefulness of the project. The Secretary of Army's authority under Section 408 has been delegated to the USACE, Chief of Engineers. The USACE Chief of Engineers has further delegated the authority to the USACE, Directorate of Civil Works and Division and District Engineers, depending upon the nature of the activity.

LIMITS OF SECTION 408 AUTHORITY: A requester has the responsibility to acquire all other permissions or authorizations required by federal, state, and local laws or regulations, including any required permits from the USACE Regulatory Program under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), Section 404 of the Clean Water Act (33 U.S.C. Section 1344), and/or Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413). In addition, an approval under Section 408 does not grant any property rights or exclusive privileges nor does it authorize any injury to the property or rights of others.

EVALUATION FACTORS: The decision whether to grant the requested permission for project alteration under Section 408 will be based on several factors. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. Review of requests for alteration will be reviewed by a USACE technical review team considering the following factors:

1) Impair the Usefulness of the Project Determination. The review team will determine if the proposed alteration would limit the ability of the USACE project to function as authorized, or would compromise or change any authorized project conditions, purposes or outputs. In order for an alteration to be approved, the requester must demonstrate that the alteration does not impair the usefulness of the federally authorized project.

2) Injurious to the Public Interest Determination. Proposed alterations will be reviewed to determine the probable impacts, including cumulative impacts, on the public interest. Factors that may be relevant to the public interest evaluation depend upon the type of USACE project being altered and the nature of the proposed alteration and may include, but are not limited to, such things as conservation, economic development, historic properties, cultural resources, environmental impacts, water supply, water quality, flood hazards, floodplains, residual risk, induced damages, navigation, shore erosion or accretion, and recreation. This evaluation will consider information received from the interested parties, including tribes, agencies, and the public. The benefits that reasonably may be expected to accrue from the proposal must be compared against its reasonably foreseeable detriments. The decision whether to approve an alteration will be determined by the consideration of whether benefits are commensurate with risks and by the net impact of the alteration on the public interest using the public interest factors.

3) Environmental Compliance. A decision on a Section 408 request is a federal action, and therefore subject to the National Environmental Policy Act (NEPA) and other

environmental compliance requirements. While USACE is responsible for ensuring environmental compliance, the requester is responsible for providing all information that the Sacramento District identifies as necessary to satisfy all applicable federal laws, executive orders, regulations, policies, and procedures. NEPA and other analysis completed to comply with other environmental statutes (e.g. Endangered Species Act) should be commensurate with the scale and potential effects of the activity that would alter the USACE project. The Sacramento District will work with the requester to determine the requirements, which will be scaled to the likely impacts of the proposed alteration and should convey the relevant considerations and impacts in a concise and effective manner.

PUBLIC INVOLVEMENT: The purpose of this notice is to solicit comments from the public; federal, state, and local agencies and officials; tribes; and other interested parties regarding the Heiny Farming Authorizations, a proposed alteration to an existing federally authorized project. Comments received within 30 days of publication of this notice will be used in the evaluation of potential impacts of the proposed action on important resources and in the evaluation of whether the proposed alteration would be injurious to the public interest and/or would impair the usefulness of the authorized project. Only the specific activities that have the potential to occupy, use or alter the Lower San Joaquin River and Tributaries Project will be evaluated. Please limit comments to the area of the alteration and those adjacent areas that would be directly or indirectly affected by the alteration to the Lower San Joaquin River and Tributaries Project. Please note that all comment letters received are subject to release to the public through the Freedom of Information Act.

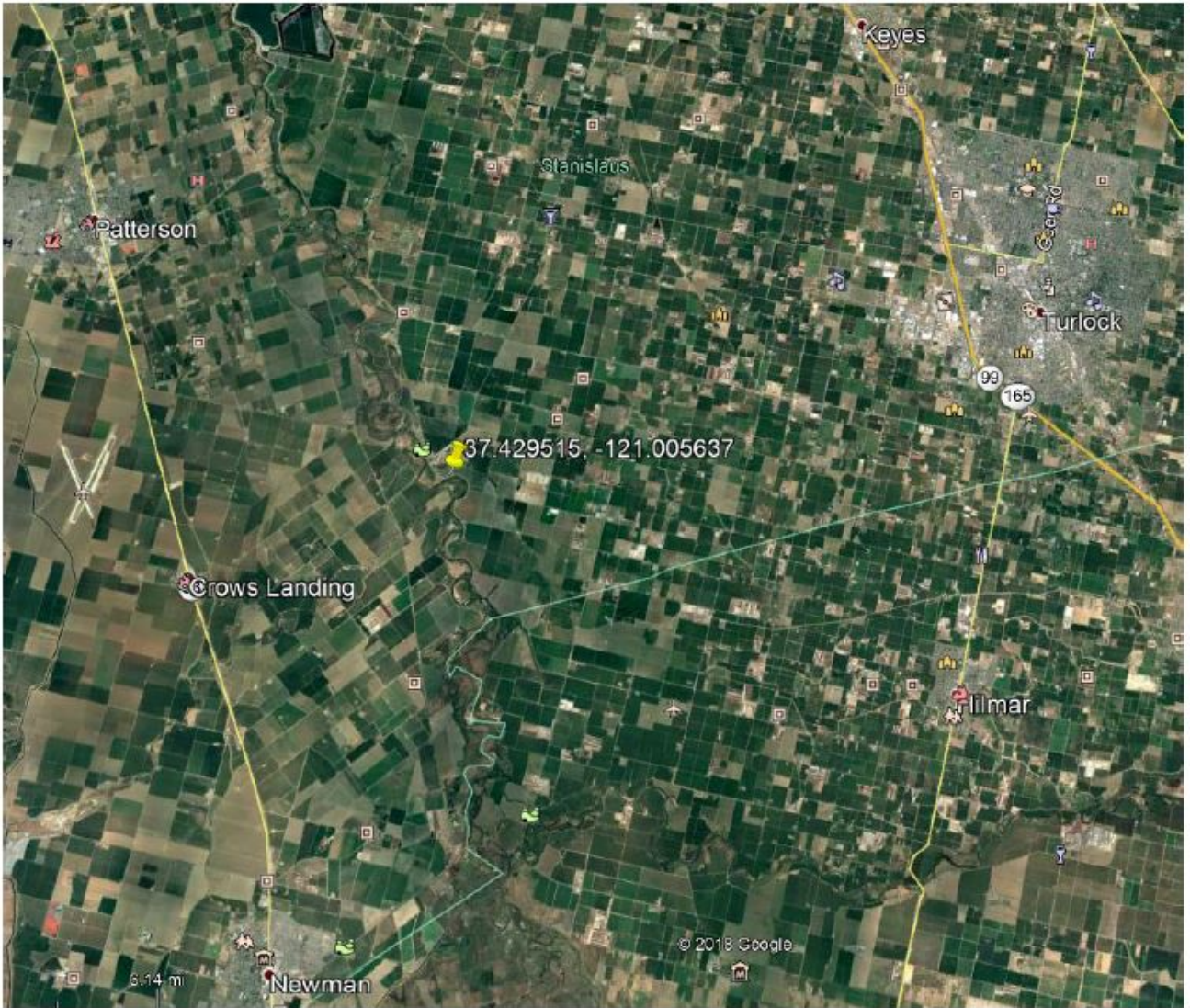
SUBMITTING COMMENTS: Written comments, referencing Identification Number 19483 must be submitted to the office listed below on or before October 01, 2020.

Oren M. Ruffcorn, Biologist
U.S. Army Corps of Engineers, Sacramento District
1325 J Street, Room 1460
Sacramento, California 95814-2922

Email: *CESPK-408-PN@usace.army.mil*

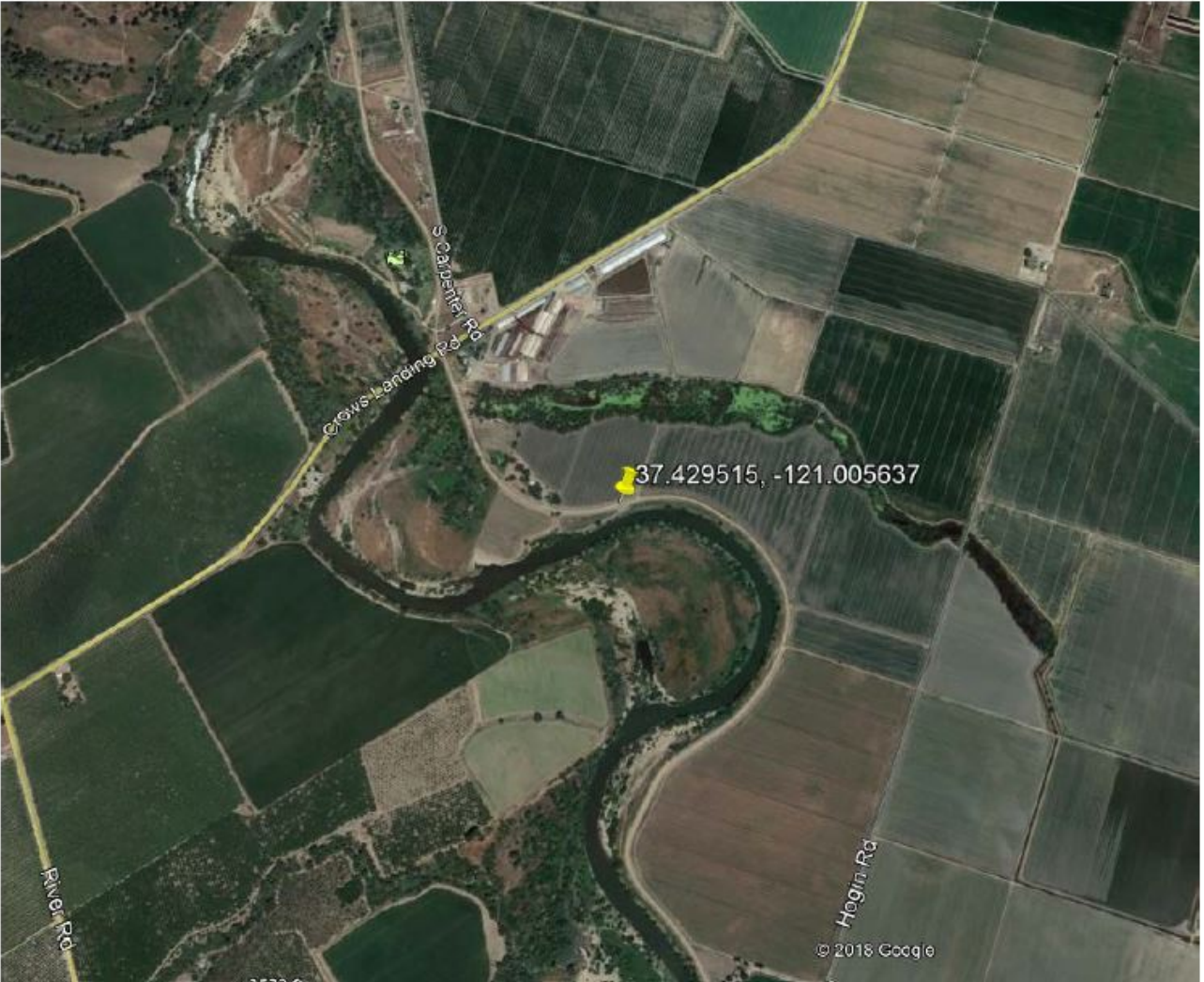
Attachments:

Project Vicinity Map



1) Vicinity map

Project Location Map



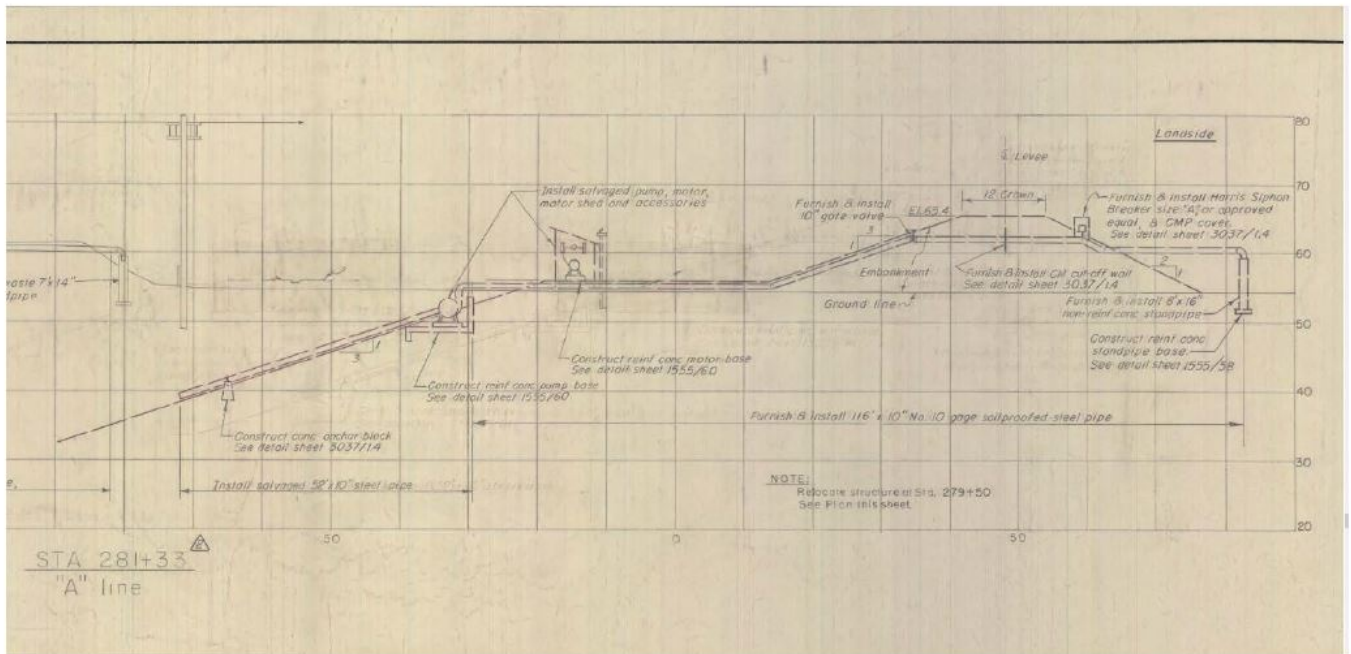
2) Location map

Project Footprint Map



3) Footprint map

Pump 1 As-built Detail. Pump setup is similar to Pump 2. Pump 2 irrigates waterside farming and does not cross the levee.



4) Diagram of Pump #1